

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 603 (Sub-No. 4X)

V AND S RAILWAY, LLC—ABANDONMENT EXEMPTION—IN PUEBLO, CROWLEY,
AND KIOWA COUNTIES, COLO.

Decided: October 19, 2015

On August 3, 2015, V and S Railway, LLC (V&S) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a line of railroad extending between milepost 747.5 near Towner and milepost 869.4 near NA Junction, a distance of 121.9 miles in southeast Colorado (the Towner Line). Notice of the exemption was served and published in the Federal Register on August 21, 2015 (80 Fed. Reg. 50,922). The notice stated that the exemption would become effective on September 20, 2015, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by August 31, 2015.

On August 24, 2015, two noncarriers, KCVN, LLC, and its wholly owned subsidiary, Colorado Pacific Railroad, LLC (collectively, Offerors), jointly filed a formal expression of intent to file an OFA to purchase the Towner Line. This filing automatically stayed the effective date of the exemption until September 30, 2015.¹

In the filing, the Offerors requested that V&S provide them with the information set forth in 49 C.F.R. § 1152.27(a) as well as certain other documentation concerning the Towner Line. By decision served September 17, 2015, the Board granted the Offerors' request to extend the due date for their OFA to October 20, 2015, and postponed the effective date of the exemption until October 30, 2015.

On September 22, 2015, V&S replied to the Offerors' request for information and submitted to the Board a series of exhibits under seal.² Among these materials are a bill of sale, quitclaim deeds, and assignment of contract right documents by which V&S acquired the Towner Line. These documents appear to indicate that part of the Towner Line passes through Otero County; V&S's verified notice of exemption and environmental report, however, indicate

¹ See 49 C.F.R. § 1152.27(c)(2)(i).

² To safeguard confidential materials, the Board granted a motion by V&S for protective order on September 11, 2015. V&S supplemented its production of OFA information on October 5, 2015.

that the Towner Line passes through only Pueblo, Crowley, and Kiowa Counties. This segment through Otero County also appears to traverse a zip code (81050) that V&S did not disclose.³

If the Towner Line does not pass through Otero County and the related zip code, V&S will be required to so advise the Board.

If, on the other hand, the line does pass through Otero County and the related zip code, V&S's verified notice of exemption and combined environmental and historic report will have failed to fully apprise the public of the proposed abandonment. In that case, therefore, V&S will be required to file a supplement, which must include that information and any other information required under 49 C.F.R. § 1152.50 and the Board's environmental rules that was omitted from its August 3 filing. V&S will be required to serve and publish the supplemental information in accordance with applicable Board regulations. The date on which V&S files this supplemental information will be considered the filing date of its verified notice of exemption. A corrected notice will be published in the Federal Register. At that time, the Board will set new deadlines for the abandonment proceeding based on the filing date of the supplement, including a new effective date for the exemption.

If the Towner Line passes through Otero County and the related zip code, all deadlines currently associated with this proceeding, including those for filing OFAs, shall no longer be operative, and this proceeding will be placed in abeyance until further order of the Board. In that case, participating parties need not re-file pleadings that have been filed in this proceeding, although they may file further pleadings addressing any new matters raised by V&S's supplemental information. If the Board serves a corrected notice and others in addition to the Offerors wish to pursue an OFA in this case, they may do so in accordance with the new deadlines concerning OFAs that the Board will set.

It is ordered:

1. If the Towner Line does not pass through Otero County and the related zip code, V&S shall so advise the Board by October 22, 2015.

2. If the Towner Line passes through Otero County and the related zip code:

(a) V&S shall submit a supplement to its August 3, 2015 verified notice of exemption and environmental report that includes all previously omitted information required by the Board's regulations and shall comply with the service and publication requirements under the Board's regulations that pertain to the supplemented material; and

(b) all deadlines in this proceeding, including the effective date of this exemption, shall no longer be operative, and the proceeding shall be placed in abeyance until further order of the Board.

3. This decision is effective on its service date.

³ See 49 C.F.R. § 1152.22(a)(8).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.